HIGH COURT OF CHHATTISGARH, BILASPUR

(DIVISION BENCH)

CORAM: **HON'BLE SHRI JAGDISH BHALLA, ACTING C.J. &**
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

Writ Appeal No.108 of 2007

Appellant Petitioner : Hemshankar Deshlahra, Age about 44 years, S/o D. Deshlahra, Chief Municipal Officer, Municipal Council, Jamul, Distt. Durg (C.G.)

-Versus-

Respondents : 1. The State of Chhattisgarh, through – The Secretary, Urban Administrative & Development Department, D. K. S. Bhawan, Raipur (C.G.)
: 2. Municipal Council Jamul, through President.

Writ Appeal Under Section 2 (1) of the C.G. High Court (Appeal to Division Bench) Act, 2006

Present:
Shri Ajay Shrivastava, Counsel for the appellant/petitioner.
Shri Vinay Harit, Dy. A.G. for the State.

ORAL ORDER
(Passed on 29.06.2007)

The following oral order of the Court was passed by **Jagdish Bhalla, Acting C.J.**

This writ appeal arises out of judgment and order dated 26.4.2007 of the Hon'ble Single Judge, who after hearing the parties had dismissed the writ petition of the petitioner/appellant who has been transferred from the post of Chief Municipal Officer, Muncipal Council, Jamul to the post of Assistant Director in the Urban Administration & Development Department, Raipur.

According to the petitioner/appellant, the Hon'ble Single Judge failed to appreciate that the petitioner/appellant had not consented to

transfer, which, according to the State Government, was deputation and till the judgment and order was pronounced the appellant/petitioner had already joined and was getting deputation allowance as well.

The main ground raised on behalf of the appellant is that now the cadre of the petitioner/appellant is changed and his seniority would also be affected as his channel of promotion does not include promotion to the post of Deputy Director and it has been further emphatically contended that under Section 86 (4) of C. G. Municpalities Act, 1961 (hereinafter referred as the Act), the petitioner/appellant can only be transferred from one municipal council to another council, therefore, the appellant cannot be transferred by the State Government to the post in question.

The learned Deputy Advocate General for the State has informed us firstly that neither seniority of the appellant is being affected nor his salary would be reduced. Further whenever question of promotion of the appellant comes his case would be considered in accordance with law immediately before a junior's case of promotion is being considered. Anyway, the appellant has not been adversely effected by his transfer order. We have been further informed that admittedly the appointing authority of the appellant is the State Government. Learned Dy.A.G. has placed reliance on **Prasar Bharti & Ors. V. Amarjeet Singh & Ors. AIR 2007 SC 1269** wherein the Apex Court held as under:

> "There exists a distinction between 'transfer' and 'deputation'. 'Deputation' connotes service outside the cadre or outside the parent department in which an employee is serving. 'Transfer', however, is limited to equivalent post in the same cadre and in the same department. Whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit the opposite indications".

As far as Section 86 (4) of the Act is concerned, we find that the State Government has inherent power to transfer the appellant in the light of Fundamental Rules 11 and 15 which read as under:

F.R.11. General conditions of service.- Unless in any case it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of the Government which pays him, and he may be employed in any manner required by proper authority, without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from general revenues, from a Local Fund, [or from the funds of a body corporate or not, which is wholly or substantially owned or controlled by the Government].

F.R. 15. Transfer to a post carrying less pay- (a) A local Government may transfer a Government servant from one post to another; provided that except—

(i) on account of inefficiency or misbehaviour, or

(ii) on his written request.

a Government servant shall not be transferred substantively to, or except in a case covered by rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under rule 14.

(b) Nothing contained in clause (a) of this rule or in clause (13) of rule 9 shall operate to prevent the transfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of rule 14.

In view of the foregoing, we find that Section 86 (4) of the Act is enabling clause by virtue of which the appellant has been transferred from one municipal council to another council. We further find that the appellant could not show any reasonable ground of violation of law nor case of *mala fides*.

We are in agreement with the view expressed by the learned Single Judge and no further interference is warranted by this Court in the impugned judgment and order.

The appeal is dismissed.

Sd/-
Ag. Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge